

107.20 FILING TORT CLAIMS AGAINST THE STATE OF IDAHO

Throughout the term of an active contract, the Contractor's public liability and property damage insurance protect the State. Situations, however, may occur in connection with contracted projects during work suspensions or following partial or final acceptance or wherein no action or negligence on the part of the Contractor is involved which may make the State liable for damage incurred by the public. For example: The State may be liable for a seal coat project following the Contractor's period of maintenance responsibility when a loose chip problem is improperly signed and broken windshields result.

Any problem that may affect the public should be reported immediately to the District Engineer and the Employee Safety/Risk Management section. Staff must be able to advise the public on filing of tort claims against the State.

The proper procedure for filing a claim against the State of Idaho is set forth by Idaho Code 6-905 of the Idaho Tort Claims Act and states that "All claims against the State...shall be presented to and filed with the Secretary of State within 180 days from the date the claim arose or reasonably should have been discovered..." Thus under the Idaho Tort Claims Act, the only office eligible to receive a claim is the Office of the Secretary of State, however, a claimant does have several other manners to make a claim against the State. The following are recommended approaches in handling three (3) of the more common situations:

- a) A citizen approaches an agency or employee of the State requesting information on filing a claim against the State of Idaho. The recommended procedure is to advise the claimant of their requirement to file a claim with the Secretary of State giving the details of the claim (as outlined in Idaho Code 6-907) and to submit the claim within the 180 days (as required by Idaho Code 6-905). The District EEO/Safety/Training Coordinators have a supply of the ITD-2326, Citizen's Claim Procedure that can be given to the claimant.
- b) A claimant personally presents a written notice of claim to an ITD employee. The written claim should be refused and advice given of the proper procedures for making a claim against the State of Idaho as outlined above.
- c) A claim or what could reasonably be interpreted as a claim is received by mail. The recommended procedure is to immediately return the claim to the claimant along with a copy of the ITD-2326, Citizen's Claim Procedure Form or a letter explaining the filing procedure. .

Any claim against the State that is received by ITD must be **immediately returned**.
ITD cannot file the claim on the behalf of the claimant.

When notified of an alleged incident, an investigation will be conducted and reported on either the ITD-90, Traffic Accident Field Report, or the ITD-1746, Tort Claim Data for Risk Management and sent to the District EEO/Safety/Training Coordinator. The District EEO/Safety/Training Coordinator will keep a copy and forward the report to the headquarters' Employee Safety/Risk Manager. ***All incidents of possible tort claims must be reported at the time they occur, or external insurance carriers could refuse responsibility for coverage.***

Any questions concerning the filing of tort claims should be referred to the headquarters' Employee Safety/Risk Manager.